IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23864 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MOHMMAD ANIS @ RAJU S/O MOHMMED YASIN KURESHI - Petitioner(s)
Versus
COMMISSIONER OF POLICE & 2 - Respondent(s)

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Appearance :
MS BANNA S DUTTA for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
MR ND GOHIL AGP for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 13/06/2006

ORAL JUDGMENT

1. By filing this petition, the petitioner, who is detained under the provisions of Prevention of Anti Social Activities Act (“PASA” for short),

has challenged his detention order dated 7-11-2005, by which he is detained as a “bootlegger” under Section 3 (1) read with Section 2 (b) of PASA. Along with the order of detention, the petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference of solitary offence registered before Sabarmati Police Station under the provisions of Prohibition Act.

2. The detaining authority after arriving at a subjective satisfaction has passed the aforesaid order of detention against the petitioner. According to the detaining authority, the petitioner has violated the law and order and public order. It is also stated in the detention order that the activities of the petitioner are prejudicial to the public health. It is also stated in the detaining authority that the petitioner is in judicial custody and he is likely to be released on bail by the competent court on solvent surety in the case, if the petitioner prefers bail application before the competent court.

3. Ms. Banna Datta, learned advocate for the petitioner has vehemently submitted that it is not mentioned in the grounds of detention that on what basis the detaining authority has come to the conclusion that the petitioner is likely to be released on bail by the competent court on solvent surety in the case, if the petitioner prefers bail application before the competent court. Ms. Datta has submitted that the petitioner has not moved any bail application.

4. Ms. Datta has further submitted that it cannot be said that the detenu is a bootlegger, simply because one criminal case is registered against him under the Bombay Prohibition Act and it can at the most be said that the petitioner-detenu has violated provisions of law but it cannot be said that the petitioner has violated public order or that his activities are prejudicial to public health. She further submitted that only because the petitioner was alleged to have possessed foreign liquor, it cannot be said that this activity is prejudicial to public health. She further submitted that it cannot be said that consumption of foreign liquor affects the public health unless there is some material on record in this behalf. It is submitted by her that the authority has not applied its mind properly and came to the conclusion that the activities of the petitioner are prejudicial to public health, even when there is no material on record in this behalf. In order to substantiate her say, Ms. Datta has relied upon the decision of the Supreme Court in **District Collector, Ananthpur and another vs. V. Laxmanna** reported in **2005 AIR SCW 1822**. In the aforesaid case, the Supreme Court has observed as under in paragraph 7 :

> "7. We do not think this argument of the learned counsel can be accepted. If the detention is on the ground that the detenu is indulging in manufacture or transport or sale of arrack then that by itself would not become an activity prejudicial to the maintenance of public order because the same

> can be effectively dealt with under the provisions of the Excise Act but if the arrack sold by the detenu is dangerous to public health then under the Act, it becomes an activity prejudicial to the maintenance of public order, therefore, it becomes necessary for the detaining authority to be satisfied on material available to him that the arrack dealt with by the detenu is an arrack which is dangerous to public health to attract the provisions of the Act and if the detaining authority is satisfied that such material exists either in the form of report of the Chemical Examiner or otherwise copy of such material should also be given to the detenu to afford him an opportunity to make an effective representation."

5. Ms. Datta has further argued that at the relevant time the petitioner was already in judicial custody yet he has been detained under the provisions of PASA. This factual aspect as such is not in dispute. Learned advocate Ms. Datta has placed reliance on a decision rendered by the Apex Court in the case of **T.V.SRAVANAN ALIAS A.R.PRASANA vs. STATE THROUGH SECRETARY AND ANOTHER,** reported in **(2006) 2 Supreme Court Cases 664**, more particularly para 14 wherein the Apex Court has held as under :

> "We are satisfied that for the same reason the order of detention cannot be upheld in this case. The bail applications moved by the appellant had been rejected by the courts and there was no material whatsoever

> to apprehend that he was likely to move a bail application or that there was imminent possibility of the prayer for bail being granted. The “imminent possibility” of the appellant coming out on bail is merely the ipse dixit of the detaining authority unsupported by any material whatsoever. There was no cogent material before the detaining authority on the basis of which the detaining authority could be satisfied that the detenu was likely to be released on bail. The inference has to be drawn from the available material on record. In the absence of such material on record the mere ipse dixit of the detaining authority is not sufficient to sustain the order of detention. There was, therefore, no sufficient compliance with the requirements as laid down by this Court. These are the reasons for which while allowing the appeal we directed the release of the appellant by order dated 13-12-2005.”

6. It is required to be noted that it is not mentioned in the grounds of detention that on what basis the detaining authority has come to the conclusion that the petitioner is likely to be released on bail by the competent court on solvent surety in the case, if the petitioner prefers bail application before the competent court. It is also required to be noted that in the detention order it is not mentioned as to how the activity of the petitioner is prejudicial to public health and it can

safely be said that the petitioner may be guilty of violating law of the land but by selling foreign liquor or by possessing the same, it cannot be said that it is prejudicial to public health.

7. Considering the aforesaid aspect of the matter and considering the fact that there is nothing to show that the activities of the petitioner are prejudicial to public health, at the most it can be said that the petitioner is guilty of violating law and order but it cannot be said that the activities of the petitioner are prejudicial to public health, therefore, the impugned order of detention is required to be quashed and set aside.

8. In view of what is stated hereinabove, the petition is allowed. The order of detention passed against the petitioner dated 7-11-2005 is quashed and set aside. The detenu Mahmmad Anis @ Raju S/o. Mahmmad Yasin Kureshi is ordered to be released forthwith unless his presence is required in connection with any other case. Rule is made absolute with no order as to costs.

(P.B.MAJMUDAR, J.)

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